

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO  
Honorable Howard R. Tallman**

<b>In re:</b>	)	
	)	
<b>ANITA J. WAPPES,</b>	)	<b>Case No. 04-30153 HRT</b>
	)	
<b>Debtor.</b>	)	<b>Chapter 7</b>
<hr style="width:40%; margin-left:0"/>	)	

**SUPPLEMENT TO ORDER DISMISSING CASE WITH PREJUDICE**

This supplements the order announced in open court on October 6, 2004, and reflected in the Minutes of Proceeding filed on that date.

The proceeding held on October 6, 2004, was a hearing on this Court's Order to Show Cause why Debtor's Chapter 7 Case Should not be Dismissed with Prejudice and Sanctions Imposed dated September 21, 2004. In that order, the Court found:

1. The Debtor filed a joint Chapter 13 bankruptcy case, 99-21284 MSK, on September 7, 1999, and received a Chapter 13 Discharge on November 30, 2001. The case was closed December 4, 2001.
2. This is the Debtor's fourth individual Chapter 7 bankruptcy case within the last two years. The three previous cases were dismissed prior to any discharge entering, and in all these cases the Debtor moved to pay the filing fee in installments, the Court granted the Debtor the right to do so and the Debtor later defaulted on those payments.
3. The Debtor's first Chapter 7 case was commenced September 22, 2003, case number 03-28783 HRT, and was dismissed October 29, 2003, for nonpayment of the filing fee required by 28 U.S.C. § 1930(a).
4. On March 8, 2004, the Debtor filed another Chapter 7 case, 04-11060 HRT, which was dismissed pursuant to 11 U.S.C. § 109(g) for nonpayment of the filing fee required by 28 U.S.C. § 1930(a). The Debtor was barred from filing a petition in this Court for 180 days, or no earlier than September 7, 2004.
5. The Debtor violated the Court's Order Dismissing Chapter 7 Case Pursuant to 11 U.S.C. § 109(g) entered March 8<sup>th</sup> in case number 04-11060 HRT, by filing a bankruptcy petition April 22, 2004, case number 04-18411 HRT.
6. The Court dismissed case number 04-18411 HRT pursuant to 11 U.S.C. 109(g) on July 1, 2004, for the Debtor's nonpayment of the filing fee required by 28 U.S.C. §

1930(a), *again* barring the Debtor from filing a petition in this Court for 180 days. The Court also notes that at the time of dismissal in case 04-18411 HRT, there was a pending Motion to Dismiss Case for Failure to Appear at the 341(a) Meeting of Creditors filed by the Chapter 7 Trustee on June 15, 2004.

7. The Debtor *again* violated an Order of this Court and filed the within Chapter 7 bankruptcy case on September 15, 2004.

The Debtor failed to appear at the October 6, 2004, hearing and this Court dismissed her case with prejudice under 11 U.S.C. § 109(g). The Court did take under advisement matters concerning the length of time that Debtor is prohibited from filing future bankruptcy cases and the dischargeability of current debts in future bankruptcy cases.

The first issue is whether this Court may impose a filing ban greater than the 180 days specified in § 109(g). The Court finds that binding precedent exists in the Tenth Circuit which limits the filing ban imposed by any dismissal with prejudice to the 180 day time period cited in § 109(g). *Frieouf v. Farm Credit Bank (In re Frieouf)*, 938 F.2d 1099, 1103-1104 (10<sup>th</sup> Cir. 1991). In the Court's view, the Debtor's abuse of the bankruptcy system has been egregious enough to warrant a filing ban in excess of 180 days, but the Court is bound to honor the Tenth Circuit interpretation of the statutory language. Consequently, the Court will order that the Debtor may not be permitted to file another bankruptcy case for 180 days from October 6, 2004. Debtor is ineligible to file another bankruptcy case until April 4, 2005.

The second issue is whether the debts listed in Debtor's current and previous bankruptcy schedules along with unpaid filing fees owed to this bankruptcy court are dischargeable debts in any future cases that the Debtor may file.

The dischargeability status of filing fees is addressed in § 523(a)(17). All unpaid filing fees owed to this Court, or any other Court for that matter, are nondischargeable debts.

The Court will impose a further restriction with respect to filing fees. It has been this Debtor's habit to take advantage of the liberal policy under the Bankruptcy Code and the Bankruptcy Rules of allowing the filing fee for bankruptcy cases to be paid in installments. As noted above, on four separate occasions this Debtor has invoked the protections of the Bankruptcy Code and has applied to pay the filing fees in installments. But no fees were ever paid in any of those cases. As a result of the Debtor's abuse of that privilege, the Court will direct that no future bankruptcy petition may be accepted from this Debtor for filing, even after the 180 day ban, if it is not accompanied by the required filing fee or a judge of this court orders that the filing fee may be paid in installments.

With respect to the Debtor's other current debts, § 349(a) provides that, for cause, this

Court may order that future discharge is barred for any debt that would have been dischargeable in the instant case. While, this Court will not permanently enjoin this Debtor from discharging her current debts, due to the abuse visited upon the bankruptcy system by this Debtor, the Court finds that cause exists to exercise its discretion to enjoin discharge of the Debtor's current debts for an extended period of time. The Court will, therefore, order that any debt that existed at the time the Debtor filed this bankruptcy case on September 15, 2004, and which would have been dischargeable in this case, is excepted from discharge in any future bankruptcy proceeding for a period of three years from the date of the hearing on this matter.

The Court does not take this action lightly. This Debtor has repeatedly taken advantage of the protections of the Bankruptcy Code with no effort whatsoever to perfect any of the four most recent filings. In support of its determination that cause exists to enjoin discharge of all of the Debtor's current debts for a three year period, the Court finds:

1. Case number 03-28783 was filed on September 22, 2003, within six years of her 1999 case. Yet, she did not disclose that earlier filing in her new petition. The Debtor may or may not have been eligible to receive a discharge in the new case, but the Court was not alerted to that eligibility issue due to her omission of information on the earlier filing from the petition in the new case.
2. The schedules filed in case 03-28783 were incomplete and many creditors appeared in them without addresses and could not be notified of the bankruptcy case. As a consequence, only five of the twelve listed creditors were even notified of the case.
3. Case number 03-28783 was dismissed on October 29, 2003, after the Debtor failed to pay even a single installment payment of the filing fee.
4. Case number 04-11060 was filed on January 22, 2004. On that date two orders were issued to correct deficiencies in the case and the Debtor responded to neither order.
5. Again, the Debtor did not list the prior cases on her petition as required.
6. Again, the Debtor applied for, and was granted, the privilege of paying her filing fee in installments.
7. Case number 04-11060 was dismissed on March 8, 2004, due to the Debtor's failure to make a single installment payment toward her filing fee obligation. That dismissal was made under § 109(g) and Debtor was prohibited from filing another petition for 180 days.

8. Case number 04-18411 was filed on April 22, 2004, in flagrant violation of this Court's March 8, order. Yet again, the Debtor's petition omitted the required listing of prior cases.
9. On the same date, without knowledge of the previous filings, the court approved another request to pay the filing fee in installments.
10. On the following day, the court issued another deficiency notice relating to the schedules and the Debtor failed to submit the required information.
11. The Debtor did not attend her creditors meeting which resulted in a motion to dismiss filed by the trustee.
12. On July 1, 2004, the case was dismissed for failure to make even a single payment on the filing fee. Again, the 180 day filing ban of § 109(g) was invoked in the order of dismissal.
13. On September 15, 2004, the current case was filed in direct violation of this Court's order. Notwithstanding the Debtor's omission of the required previous filing information from her petition, this time the illegality of the Debtor's petition was discovered early in the process and the Court issued its September 21, 2004, Order to Show Cause why Debtor's Chapter 7 Case Should not be Dismissed with Prejudice and Sanctions Imposed.

Much wasted time and effort has been expended by court personnel at all levels due to Debtor's omission of information regarding prior bankruptcy cases from her various petitions. While the Court may be inclined to view a single omission, in appropriate circumstances, as an innocent error, when it is repeated under oath four times in a row, the Court's conclusion that the Debtor has committed a fraud on the Court is inescapable. That the Debtor declined the Court's invitation to appear and explain her behavior merely reinforces the Court's conviction in that regard.

Under the circumstances, the Court's order enjoining discharge of current debts for three years is a moderate and measured reaction to the Debtor's actions. In accordance with the above discussion, it is

**ORDERED** that Debtor Anita J. Wappes is prohibited from filing any bankruptcy case in this court, or any other court, until after April 4, 2005. It is further

**ORDERED** that, in connection with any case filed by this Debtor after April 4, 2005, no

order granting the Debtor permission to pay filing fees in installments shall be effective unless that application is approved by a judge of this court. The clerk is directed to refer any such application to the appropriate judge for review. It is further

**ORDERED** that no debt which is an obligation of this Debtor, and that was in existence when this case was filed on September 15, 2004, may be discharged in any future bankruptcy proceeding commenced prior to October 6, 2007.

Dated this 10<sup>th</sup> day of November, 2004.

**BY THE COURT:**

/s/ Howard Tallman  
Howard R. Tallman, Judge  
United States Bankruptcy Court